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24283	7590	10/16/2008	EXAMINER	
PATTON BOGGS LLP 1801 CALIFORNIA STREET SUITE 4900 DENVER, CO 80202			CHEN, KEATH T	
			ART UNIT	PAPER NUMBER
			1792	
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			10/16/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. The proposed After Final amendment, filed on 10/06/2008, will not be entered because it raises new issues for further consideration, such as new limitation of claim 16.

Response to Affidavit

2. The declaration under 37 CFR 1.132 filed on 10/06/2008 is insufficient to overcome the rejection of claims 1-11 and 16 based upon '146 and '025 as set forth in the Final Office action (06/05/2008) because:

a. In item 6, Applicant made conclusive summary without pointing out factual evidence to support the supposed error in the rejection. See MPEP 716.01(c) III Opinion Evidence, "Although an affidavit or declaration which states only conclusions may have some probative value, such an affidavit or declaration may have little weight when considered in light of all the evidence of record in the application".

b. In item 7-13, Applicant described the background/heart of the instant application without citing factual evidence that related to the claimed invention. See MPEP 716.01(b) See MPEP 716.01(b) "TO BE OF PROBATIVE VALUE, ANY SECONDARY EVIDENCE MUST BE RELATED TO THE CLAIMED INVENTION (NEXUS REQUIRED)" and 716.01(c) I and II.

c. In item 14, Applicant opinions that the pressure control chamber (PCC) is unlike a throttle valve without pointing out the supposed error in the office action why #85 or #210 of '146 does not fall into a broadest reasonable interpretation of PCC. (Neither #85 nor #210 is a throttle valve.)

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d. In item 15-16, Applicant repeats the argument on the second last paragraph of page 9 and the first paragraph of page 10 of "REMARKS". Again, this is not factual evidence that support Applicant's argument. See MPEP 716.01(b) and (c). The response to the Applicant's Argument/Remarks is discussed below.

e. In item 17, Applicant touches the heart of the issue by conclusively asserting that "Those skilled in the art know that a gas energized reactor is anything but a PCC" by attempting to support it with "Pressure is not controlled in a gas energized reactor for the reasons discussed above". Yet, there is no discussion why the pressure of a gas energized reactor is not controlled in the passage above item 17, and no factual evidence of any kind.

The examiner maintains that a gas energized reactor #210, with a larger diameter than the tube #85, is capable of altering pressure response, and similar to the function of #204 of in Fig. 2 of instant application.

f. In item 18, Applicant repeats the argument on the second paragraph of page 10 to the top of page 11. Again, this is not factual evidence that support Applicant's argument. See MPEP 716.01(b) and (c). The response to the Applicant's Argument/Remarks is discussed below.

g. In item 19, Applicant speculates the function and purpose of '146 reference, and argues if '146 is designed properly, Applicant's opinion is that "motivation" to replace throttle valve cannot exist. The examiner has not made

rejection based on replacing throttle valve. See response to Argument/Remarks below.

h. In item 20, Applicant repeats the argument on the second paragraph of page 9. Again, this is not factual evidence that support Applicant's argument. See MPEP 716.01(b) and (c). The response to the Applicant's Argument/Remarks is discussed below.

Response to Arguments

Applicants' arguments filed 10/06/2008 have been fully considered but they are not persuasive.

2. In regarding to 35 USC 103(a) rejection of claims 1, 3-5, 7-11 (paragraph 11 of the office action), Applicant's arguments are:

a) In regarding to claims 1 and 5, diffuser #200 of the '025 patent cannot be substituted for the throttle valve #82 of the '146 patent, see the last paragraph of page 7 to the first complete paragraph of page 8, and such substitution would defeat the purpose of restriction.

This argument is found not persuasive.

The combination of '025 and '146 is to add the diffuser #200 to the apparatus of '146 (without replacing throttle valve), see paragraph 23 of the office action, for the purpose of rapid cycle in venting and to reduce minute particle contamination, see paragraph 24. The examiner maintains such addition would not defeat the purpose of restriction. The examiner also maintains diffuser #200 is a flow restricting element because it has narrow channels (see Fig. 4 of '025).

b) In regarding to claims 3 and 7, Applicant argues that "The Office Action, without citing a reference, states that this third FRE and the abatement chamber are obvious, and cites col. 6, lines 35-38 of ('146) as motivation to further prevent back flow of affluent", see the last paragraph of page 8.

This argument is found not persuasive.

The examiner maintains the '146 reference is cited in the office action, as admitted by the second part of this Applicant's statement, which teach the use of a FRE to prevent backflow. The examiner further maintains the motivation to further prevent back flow of affluent is obvious to a person of ordinary skill in the art. '146 taught to prevent backflow of contaminants from #210 (part of gas treatment system #200 Figs. 1 and 4) to process chamber #25 (fig. 1); it would be obvious to a persona of ordinary skill in the art to realize that such backflow can also occurs between the pump (#125) and #200, as it is well-known that vacuum pump accumulates contaminants.

c) In regarding to claims 4 and 8, Applicant argues that the break lines between chamber #25 and conduit #85 in Fig. 1 indicate substantial separation between the parts and therefore it is not a single vessel; and the examiner is simply reading the current application into the '146 patent.

This argument is found not persuasive.

The examiner maintains Applicant's "single process vessel" (in Fig. 2, for example) comprises a reactor chamber (#10) and an exhaust conduit (#209). Applicant did not specify the figures are to scale, nor specify the size limitation of the conduit to be considered as a single process vessel. Therefore, the examiner maintains the chamber

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(#25) and conduit (#85) of '146 fit Applicant's specification of a "single process vessel", length of conduit notwithstanding.

The examiner has to read Applicant claim and specification and then followed the broadest reasonable interpretation to map to the prior art references, as described in MPEP. Simply or not, the examiner maintains the proper procedure was followed.

d) In regarding to claims 9-11, Applicant's argument is based on the patentability of the parent claims. Since the parent claims are found not patentable, claims 9-11 are not patentable.

3. In regarding to 35 USC 103(a) rejection of claims 1, 2, 5, and 6 (paragraph 33 of the office action), Applicant asserts that office action "... the throttle valve 211 as being replaced by an immobile FRE", see the second last paragraph of page 9.

As stated above, neither the throttle valve #82 nor the inlet #211 was being replaced by an immobile FRE in the office action. The office action simply said "to have added an immobile diffuser/flow restrictor", see paragraph 41 of the office action.

Applicant's arguments are:

e) An energized gas reactor is not a PCC, see the last paragraph of page 9, by referring to declaration paragraph/item 19 (sic 17).

This argument is found not persuasive.

Applicant's Declaration is conclusive without objective evidence, as discussed above.

The examiner maintains that a gas energized reactor #210, with a larger diameter than the tube #85, is capable of altering pressure response, and similar to the function of #204 of in Fig. 2 of instant application.

f) There is no basis to add the second FRE, see the second paragraph of page 10, because “the excursions in the reaction chamber cause flow into the pumps” is not a problem.

This argument is found not persuasive.

The examiner maintains the motivation to further prevent back flow of affluent is obvious to a person of ordinary skill in the art. To clarify for the Applicant, ‘146 taught to prevent backflow of contaminants from #210 (part of gas treatment system #200 Figs. 1 and 4) to process chamber #25 (fig. 1); it would be obvious to a persona of ordinary skill in the art to realize that such backflow can also occurs between the pump (#125) and #200, as it is well-known that vacuum pump accumulates contaminants. A person of ordinary skill in the art would concern the contaminant backflow from the pump toward the gas treatment system and ultimately toward the reaction chamber. Applicant is incorrect in characterizing the function of this second FRE (it is not to prevent “the excursions in the reaction chamber cause flow into the pumps”).

g) Applicant further argues that adding a second FRE at a different location is not “duplication of parts”, see the last two lines of page 10 to line 7 of page 11.

The examiner maintains that ‘146 taught to prevent backflow of contaminants from #210 (part of gas treatment system #200 Figs. 1 and 4) to process chamber #25 (fig. 1); it would be obvious to a persona of ordinary skill in the art to realize that such

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backflow can also occurs between the pump (#125) and #200, as it is well-known that vacuum pump accumulates contaminants. A person of ordinary skill in the art would have known duplication of the backflow by adding a throttle valve or one-way valve at a downstream location would also prevent backflow.

4. In regarding to #85 being the PCC and then #210 being the PCC in the same sentence, see the first complete paragraph of page 11.

The examiner maintains there is no switching of PCC from #85 to #210 in the same sentence. Paragraph 11 (including paragraphs 12-32) of the office action (06/05/2008) rejects claims 1, 3-5, and 7-11 based on '146 and '025 is mapping exhaust tube #85 as the pressure control chamber PCC. Paragraph 33 (including paragraphs 34-43) rejections claims 1-2 and 5-6, also based on '146 and '025, but is mapping the gas energized reactor #210 as PCC. Paragraphs 11 and paragraph 33 are two separate lines of rejections. The PCC is mapping to either #85 or #210 in each line of rejection separately and without jumping from one line to another. Both #85 and #210 fit the description of PCC according to Applicant's specification and a broadest reasonable interpretation.

5. In regarding to claim 16, Applicant argument is not persuasive because amended claim 16 has not been entered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEATH T. CHEN whose telephone number is (571)270-1870. The examiner can normally be reached on 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. T. C./
Examiner, Art Unit 1792

/Michael Cleveland/
Supervisory Patent Examiner, Art Unit 1792